

122. The Court entered an Order of Remand on March 6, 1997. Notice of Entry of Order was given on March 11, 1997. This matter, in accordance with the Court's directive on remand, was reconsidered by the Commission. The Commission issued an Amended Decision, Order and Notice of Entry of Order for each of the sales of the Timber Lake, McIntosh and Morristown exchanges on August 22, 1997. It is from those three Amended Decisions and Orders that this appeal arose.

The Court, having reviewed the record of the Commission and having considered the briefs and arguments of the respective parties' counsel and based upon its bench decision, pursuant to SDCL 1-26-36 hereby

ORDERS that the Findings of Fact and Conclusions of Law and Orders disapproving the sales of the Timber Lake, McIntosh and Morristown exchanges by U S WEST Communications, Inc., are hereby affirmed.

Dated this 18th day of February, 1998.

BY THE COURT:

/s/STEVEN L. ZINTER

Steven L. Zinter  
Circuit Court Judge

ATTEST:

Mary L. Erickson  
Clerk  
by /s/SHARON MCENTAFFER, Deputy  
(SEAL) State of South Dakota } ss  
County of Hughes }

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 19th day of Feb 1998  
MARY L. ERICKSON, Clerk of Courts  
By Sharon McEntaffer  
Clerk of Courts (Deputy)

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**

FEB 18 1998

Mary L. Erickson CLERK  
By \_\_\_\_\_ Deputy

CR2-51

96

RESOLUTION NO 154-97

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a), 1(c), 1(g) and 1(j) is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe; is empowered to promote and protect the health, education and general welfare of the member of the Tribe and to administer such services as may contribute to the social and economic advancement of the Tribe and its members; and is further authorized to encourage and foster the arts and traditions of the Sioux Indians; and is further empowered to manage, protect and preserve the natural resources of the Standing Rock Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has considered the request of the Cheyenne River Sioux Tribe located adjacent to the Standing Rock Sioux Indian Reservation in South Dakota for a "Certificate of Convenience and Necessity to own, construct, maintain, and operate a Telecommunications Systems" on the Cheyenne River Sioux Reservation and within areas of the Standing Rock Sioux Indian Reservation as well; and

WHEREAS, it is the intent of the Standing Rock Sioux Tribe to proceed with planning, and developing of its own utilities to include a telephone company serving the Standing Rock Sioux Indian Reservation in a timely basis; and

WHEREAS, although the Tribal Code of Justice of the Standing Rock Sioux Tribe does not now provide for the authority for the issuance of "Certificate of Convenience and Necessity", the Standing Rock Sioux Tribal Council does realize the need of the Cheyenne River Sioux Tribe for a Standing Rock Sioux Tribal Certificate of Convenience and Necessity to operate a telecommunications system on the Standing Rock Sioux Indian Reservation; and

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribal Council does hereby authorize, by this resolution, for issuance of a provisional Certificate of Convenience and Necessity to the Cheyenne River Sioux Tribe to operate a telecommunications system on the Standing Rock Sioux Indian Reservation; and

BE IT FURTHER RESOLVED, this provisional Certificate is issued with the understanding that the Standing rock Sioux Tribe shall be consulted by the Cheyenne River Sioux Tribe on all aspects of the telecommunications systems being operated within the Standing Rock Sioux Indian Reservation to the appropriate Tribal representative(s); and

123

97

EXHIBIT

2

RESOLUTION NO. 154-97


Page 2

BE IT FURTHER RESOLVED, that the Chairman and the Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.


## CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribal Council does hereby certify that the Tribal Council is composed of 17 members of whom 13 were present constituting a quorum at a meeting thereof, duly and regularly called, noticed, convened, and held on the 2nd day of APRIL, 1997, and that the foregoing resolution was duly adopted by the affirmative vote of 9 members, with 3 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 2nd DAY OF APRIL, 1997.

  
Jesse Taken Alive, Chairman  
Standing Rock Sioux Tribal Council

ATTEST:

  
Elaine McLaughlin, Secretary  
Standing Rock Sioux Tribal Council

(OFFICIAL TRIBAL SEAL)

124

98

Owl River Telephone, Inc.  
Board of Directors Resolution No. 97-05-28-07

### PROCEDURES FOR RESOLUTION OF DISPUTES

The Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") adopts this Resolution to establish procedures for resolution of disputes regarding the Telephone Authority's provision of telecommunications services to all subscribers of telephone exchanges owned and operated by the Telephone Authority.

#### SEC. 1. AUTHORIZATION.

(a) The Telephone Authority is chartered by Cheyenne River Sioux Tribal Ordinance No. 24, and is authorized under that tribal ordinance to own and operate telephone exchanges within and without the exterior boundaries of the Cheyenne River Indian Reservation

(b) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to sue and be sued in its corporate name upon any contract, claim or obligation arising out of its activities relating to the provision of telecommunications services.

(c) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to take such further actions as are commonly engaged in by corporate bodies of similar character as the Board of Directors of the Telephone Authority, and which the Board of Directors of the Telephone Authority deems necessary and appropriate.

#### SEC. 2. PURPOSE.

(a) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24,

Draft May 8, 1997

the Telephone Authority adopts these dispute resolution procedures in order to provide a forum in which all subscribers to telephone exchanges owned and operated by the Telephone Authority, whether within or without the exterior boundaries of the Cheyenne River Indian Reservation, may present their disputes and seek redress thereof.

(b) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24, the Telephone Authority waives its immunity from suit in the Cheyenne River Sioux Tribal Court for the limited purpose of providing all subscribers to telephone exchanges owned and operated by the Telephone Authority with a means of redress for disputes regarding the provision of telecommunications services by the Telephone Authority. Such redress shall not include money damages apart from the reimbursement of funds previously paid to the Telephone Authority by an aggrieved subscriber.

(c) The procedures for hearing and resolving disputes set forth herein are intended to provide all subscribers to telephone exchanges owned and operated by the Telephone Authority with due process of law.

### SEC. 3. INDEPENDENT HEARING EXAMINER.

(a) The Telephone Authority shall hire an Independent Hearing Examiner to hear disputes brought by subscribers to telephone exchanges owned and operated by the Telephone Authority relative to the provision of telecommunications services by the Telephone Authority.

(1) The Independent Hearing Examiner shall not be a member of the Cheyenne River Sioux Tribe, but shall have experience in and be familiar with dispute resolution processes.

Draft May 8, 1997

(2) The Board of Directors of the Telephone Authority shall determine in its sole discretion whether to hire an Independent Hearing Examiner for a specific time period to hear various disputes, or to hire an Independent Hearing Examiner for each specific dispute. The Board of Directors of the Telephone Authority shall also determine in its sole discretion the manner and amount of compensation the Telephone Authority shall pay the Independent Hearing Examiner.

(b) The Independent Hearing Examiner shall first consider any dispute regarding the provision of telecommunications services by the Telephone Authority. Such first hearing shall be in the nature of an administrative proceeding.

(c) The subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority seeking resolution of a dispute regarding the provision of telecommunications services by the Telephone Authority may present evidence and testimony supporting his, her or their position in any dispute with the Telephone Authority, and may be represented by counsel before the Independent Hearing Examiner.

(d) The Telephone Authority may present evidence and testimony in its defense and may be represented by counsel before the Independent Hearing Examiner.

(e) After due consideration of the facts underlying a dispute, and the testimony and evidence presented by the parties to dispute, the Independent Hearing Examiner shall render a decision.

(1) All decisions rendered by the Independent Hearing Examiner shall be binding

Draft May 8, 1997

upon the subscriber or subscribers bringing the dispute and upon the Telephone Authority, unless the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority seeks review of the decision of the Independent Hearing Examiner in the Cheyenne River Sioux Tribal Court pursuant to Section 4 of this Resolution.

(2) All decisions rendered by the Independent Hearing Examiner shall be in writing and shall be served by U.S. Mail upon all parties to disputes before the Independent Hearing Examiner, and upon the Telephone Authority. The Independent Hearing Examiner shall also post all written decisions for a reasonable time in a conspicuous place in the offices of the Telephone Authority for public inspection.

(c) All evidence and testimony presented to the Independent Hearing Examiner shall become part of the administrative record underlying the dispute.

#### SEC. 4. JUDICIAL REVIEW OF INDEPENDENT HEARING EXAMINER DECISIONS.

(a) If, after having exhausted administrative remedies as provided by Section 3 of this Resolution, the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority is or are dissatisfied with the decision of the Independent Hearing Examiner, the subscriber or subscribers, or the Telephone Authority may bring an action for review of the Independent Hearing Examiner's decision in the Cheyenne River Sioux Tribal Court within 30 days of the issuance of the Independent Hearing Examiner's decision.

(1) The party seeking review of a decision of the Independent Hearing Examiner

Draft May 8, 1997

must file a petition for review of such decision with the Independent Hearing Examiner and the Cheyenne River Sioux Tribal Court, and must notify all parties to the dispute regarding which the Independent Hearing Examiner issued such decision of the petition for review by sending all parties a copy of the petition for review by U.S. Mail.

(2) Failure to seek review within 30 days of the issuance of the Independent Hearing Examiner's decision shall result in the finality of the decision.

(b) A party may seek review of a decision of the Independent Hearing Examiner where the party asserts that the decision was:

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) Contrary to the laws, regulations and ordinances of the Cheyenne River Sioux Tribe, and any applicable laws of the United States; or

(3) Unsupported by substantial evidence and/or testimony presented to the Independent Hearing Examiner.

(c) Upon receiving a petition for review of a decision of the Independent Hearing Examiner, the Independent Hearing Examiner shall forward the administrative record to the Cheyenne River Sioux Tribal Court.

(d) Any review by the Cheyenne River Sioux Tribal Court of a decision of the Independent Hearing Examiner shall be appellate in nature upon the standards set forth in subsection (b) of this section 4, shall defer to the Independent Hearing Examiner's factual



determinations, and shall not be de novo.

**SEC. 5. SUBSCRIBER ADVISORY COMMITTEE.**

(a) There is hereby established a Subscriber Advisory Committee.

(1) The Subscriber Advisory Committee shall be comprised of three subscribers, at least of whom shall not be members of the Cheyenne River Sioux Tribe, of each telephone exchange owned and operated by the Telephone Authority.

(2) The Board of Directors of the Telephone Authority shall appoint the Subscriber Advisory Committee members for a period of one year. At the end of one year, the Board of Directors may appoint three new Subscriber Advisory Committee members, or may elect to extend the current members' terms for an additional year, not to exceed three consecutive years of service.

(b) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee on all matters related to:

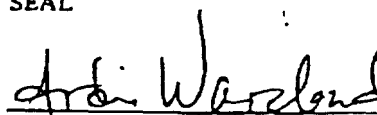
(1) Proposed increases in the rates charged by the Telephone Authority for the provision of telecommunications services; and

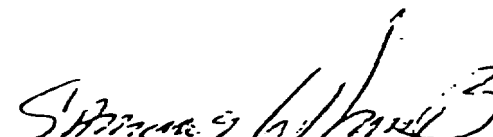
(2) Proposed reductions in the telecommunications services provided by the Telephone Authority.

(c) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee prior to taking any of the actions described subsection (b) of this section 5.

Adopted: May 28, 1997

SEAL

  
Board of Directors-Secretary

  
Board of Directors-President

122

104

officers who fix city phone rates. In a very real sense, municipal phone companies are also self-regulated.

The Telecommunications Act of 1996 reinforces the Commission's obligation to consumers. 47 U.S.C. § 254(b) preserves the primary functions of the Commission:

Nothing in this section shall affect the ability of the State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and **safeguard the rights of consumers.** (Emphasis added.)

It is submitted that "protection of the public interest" includes (at least) ensuring the fair, reasonable, and non-discriminatory delivery and pricing of telephone service to consumers. With that determination in mind, each of Appellants' contentions fail.

The patrons of the Timber Lake, Morristown, and McIntosh exchanges are currently served by U.S. West—a fully regulated company. Those subscribers for many years have enjoyed the protection provided by regulatory oversight of U S WEST by the Commission. Consequently, although CRSTTA "currently provides adequate service to its present customers" the Commission recognized (correctly) that purchase by CRSTTA would transfer all subscribers to service from an entity against whom they would have no recourse for price gouging, discriminatory pricing, inadequate service or any of the other things for which the PUC ordinarily provides a remedy. The Commission (also correctly) noted that nearly all subscribers would be unable to vote in tribal elections or vote for the board of the CRSTTA. This is a recognition of the absence of any self-regulation component in the proposed sale. The Commission concluded that non-Indian and non-

transactor—here, the wholesalers who sell to the Tribe or the consumers who buy from the Tribe.

515 U.S. at 514.<sup>3</sup>

Consequently, under Chickasaw if the legal incidence of SDCL 10-33 falls upon CRSTTA, the tax is preempted and not valid or enforceable against CRSTTA. Because Potawatomie presupposes a tax valid and enforceable against non-Indians or non-members, that decision is not helpful to Appellants. The "legal incidence" of SDCL 10-33 is on the Tribe, therefore Chickasaw Nation governs; the tax cannot be enforced against non-Indians or non-members because the law does not impose the tax on the subscribers. Consequently, the Appellants entire tax argument fails.<sup>4</sup> Even assuming that SDCL 10-33 was rewritten by the legislature to place the "legal incidence" upon the subscriber, the Appellants' tax argument still fails for three reasons.

First, the PUC has no authority to enter into a tax collection agreement. The South Dakota legislature authorized the state Department of Revenue (not the PUC) to enter into tax collection agreements with the Indian tribes. SDCL 10-12A-2. This, of course, makes

---

<sup>3</sup>The Court declined to decide if Congress had expressly authorized the collection of motor fuel taxes from Indians under the Hayden-Cartwright Act, 61 Stat. 641, 644; 70 Stat. 799 (codified at 4 U.S.C. § 104).

<sup>4</sup>Appellants might have argued that Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973) would mandate CRSTTA to pay the tax imposed by SDCL 10-33 on (at least) the gross receipts of the Morristown and McIntosh exchanges. However, CRSTTA would assert sovereign immunity as a defense under Potawatomie. See Appellant Brief at 19. See also, Employment Sec. Dept. of South Dakota v. Cheyenne River Sioux Tribe, 119 N.W.2d 285 (S.D. 1963). The result is an "adequate alternative" which the Appellants have chosen not to identify for the Commission or this court.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

CHEYENNE RIVER SIOUX TRIBE  
TELEPHONE AUTHORITY,

Plaintiff,

U.S. WEST COMMUNICATIONS, INC.,

Plaintiff-Intervenor,

v.

PUBLIC UTILITIES COMMISSION  
OF SOUTH DAKOTA, et al.,

Defendants.

CIV. 95-3035

STIPULATION TO STAY  
PROCEEDINGS

---

The parties in the above-entitled matter hereby agree to enter into the following stipulation for a limited stay of these proceedings until the decision of the Circuit Court for the Sixth Judicial Circuit in the concurrent state court litigation:

**BACKGROUND**

1. On September 7, 1995, U S West Communications, Inc. ("U S West") appealed the denial of the Public Utilities Commission of South Dakota ("Commission") of U S West's application to sell three telephone exchanges to the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority"). *USWC's Statement of Issues, U S West Communications, Inc. v. Public Utilities Comm'n of S.D.*, No. CIV 95-288 (Sixth Judicial Circuit, Sept. 7, 1995). On August 31, 1995, the Telephone Authority also

appealed the Commission's denial. Notice of Appeal, In the Matter of the Sale of Certain Telephone Exchanges By U S West Communications, Inc. to Certain Telecommunications Companies in S.D., No. CIV 95-295 (Sixth Judicial Circuit, Aug. 31, 1995).

2. On November 3, 1995, the Telephone Authority's appeal was dismissed. Judgment, In the Matter of the Sale of Certain Telephone Exchanges By U S West Communications, Inc. to Certain Telecommunications Companies in S.D., No. CIV 95-295 (Sixth Judicial Circuit, Nov. 3, 1995). On November 9, 1995, the court permitted the Telephone Authority to intervene as a party plaintiff in U S West's appeal. Order Granting Cheyenne River Sioux Tribe Telephone Authority's Motion to Intervene, U S West Communications, Inc. v. Public Utilities Comm'n of S.D., No. CIV 95-288 (Sixth Judicial Circuit, Nov. 9, 1995).

3. On October 24, 1995, the Telephone Authority filed this action. Complaint (Oct. 24, 1995). On November 16, 1995, the parties stipulated that U S West could intervene as a party plaintiff, and the Court approved the stipulation on November 21, 1995. Stipulation and Order (Nov. 14, 1995).

4. Briefing was completed in the state court proceedings, and on February 2, 1996, the Circuit Court heard argument in those proceedings. The parties are presently awaiting a decision from the Circuit Court.

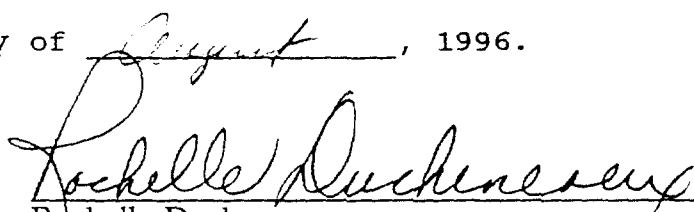
### STIPULATION

5. Because the present case is closely related to the issues before the state court, the parties agree that the instant case should be stayed pending the decision of the Circuit Court for the Sixth Judicial Circuit.

6. The parties agree that the discovery schedule, entered into to by the parties on March 11, 1996 pursuant to FED. R. CIV. P. 26(f), and approved by the Court in its *Rule 16 Scheduling Order* (Mar. 15, 1996), should be suspended during the stay of these proceedings.

7. The parties agree that 30 days after the decision of the Circuit Court, they will either (1) submit to the court a new schedule for discovery, as required by FED. R. CIV. P. 26(f), and propose a new Rule 16 scheduling order or (2) request an additional stay.

Dated this 26<sup>th</sup> day of August, 1996.



Rochelle Ducheneaux  
HCR3, Box 86A  
Gettysburg, South Dakota 57442  
(605) 733-2164



Scott B. McElroy  
Alice E. Walker  
Greene, Meyer & McElroy, P.C.  
1007 Pearl Street, Suite 220  
Boulder, Colorado 80302  
(303) 442-2021

*Attorneys for Plaintiff CRST Telephone Authority*

Thomas J. Welk  
Tamara A. Wilka  
Boyce, Murphy, McDowell & Greenfield, L.L.P.  
P.O. Box 5015  
Sioux Falls, SD 57117-5015  
(605) 336-2424

William P. Heaston  
US West Communications  
1801 California Street, Suite 5100  
Denver, Colorado 80202

Peter C. Maxfield  
Professor of Law  
University of Wyoming  
College of Law  
P.O. Box 100  
Laramie, Wyoming 82070

By: 

Tamara A. Wilka

*Attorneys for Plaintiff-Intervenor U.S. West  
Communications*

MARK BARNETT  
ATTORNEY GENERAL

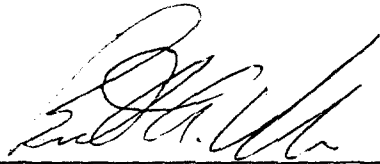
Lawrence E. Long  
Chief Deputy Attorney General  
500 East Capitol  
Pierre, South Dakota 57501-5070  
(605) 773-3215

Charles D. McGuigan  
Assistant Attorney General  
500 East Capitol  
Pierre, South Dakota 57501-5070  
(605) 773-3215

By: 

Charles D. McGuigan

Brent Wilbur  
Attorney at Law  
P.O. Box 160  
Pierre, South Dakota 57501-0160  
(605) 244-8803

By:   
Brent Wilbur

*Counsel for Defendants*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**

SEP 16 1996

  
CLERK

CHEYENNE RIVER SIOUX TRIBE  
TELEPHONE AUTHORITY,

Plaintiff,

U.S. WEST COMMUNICATIONS, INC.,

Plaintiff-Intervenor,

v.

PUBLIC UTILITIES COMMISSION  
OF SOUTH DAKOTA, et al.,

Defendants.

CIV. 95-3035

ORDER APPROVING  
STIPULATION TO STAY  
PROCEEDINGS

The matter having come before the Court regarding the  
Stipulation to Stay proceedings jointly submitted by the partes,

IT IS ORDERED:

(1) The Stipulation to Stay Proceedings is approved.

(2) That the discovery schedule, entered into by the  
parties on March 11, 1996 pursuant to FED. R. Civ. P. 26(f), and  
approved by the Court in its *Rule 16 Scheduling Order* (Mar. 15, 1996),  
is suspended during the stay of these proceedings.

(3) That within 30 days of the decision of the Circuit  
Court of the Sixth Judicial Circuit in U S West Communications  
Inc., v. Public Utilities Comm'n of S.D., No. CIV. 95-288, the  
parties shall either: (a) submit a new schedule for discovery as

required by FED. R. CIV. P. 26(f) and propose a new Rule 16 scheduling order; or (b) request an additional stay.

Dated this 16<sup>th</sup> day of September, 1996.

BY THE COURT:

Charles B. Kammann  
U.S. District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Richard J. Kammann  
DEPUTY

(SEAL)

**BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.**  
ATTORNEYS AT LAW

RECEIVED

AUG 04 1997

GREENE, MEYER & McELROY

Jeremiah D. Murphy  
Russell R. Greenfield  
David J. Vickers  
Gary J. Pashby  
Vance R.C. Goldammer  
Thomas J. Welk  
Terry N. Prendergast  
James E. McMahon  
Douglas J. Hajek  
Michael S. McKnight  
Gregg S. Greenfield  
Tamara A. Wilka  
Roger A. Sudbeck  
Carolyn A. Thompson  
Lisa Hansen Marso

Norwest Center, Suite 600  
101 North Phillips Avenue  
Sioux Falls, South Dakota 57104  
P.O. Box 5015  
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424  
Facsimile 605 334-0618

Of Counsel  
John R. McDowell

J.W. Boyce (1884-1915)  
John S. Murphy (1924-1966)

August 1, 1997

The Honorable Charles B. Kornmann  
U S Courthouse  
102 4th Avenue SE  
Aberdeen, SD 57401

Re: Cheyenne River Sioux Tribe Telephone Authority and U S West Communications,  
Inc. v. Public Utilities Commission of the State of South Dakota; Civ. 95-3035  
Our File No. 2104-4j (94-122)

Dear Judge Kornmann:

The purpose of this letter is to update you on the status of this case and to request that you continue the stay granted on September 16, 1996. As you will recall, at that time you entered an Order Approving Stipulation to Stay Proceedings pending the outcome of the South Dakota circuit court's decision in a related state court proceeding. The Order provided that within 30 days of the circuit court's decision the parties either (a) submit a new schedule for discovery as required by Fed. R. Civ. P. 26(f) and propose a new Rule 16 scheduling order; or (b) request an additional stay.

On February 21, 1997, the circuit court issued a 41 page Memorandum Decision, a copy of which is enclosed, which affirmed in part and reversed and remanded in part the Public Utilities Commission's decision denying U S WEST Communications, Inc.'s ("U S WEST") proposed sale of three local telephone exchanges to the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority"). On March 3, 1997, the circuit court issued an Order of Remand, a copy of which is also enclosed, which incorporated the February 21, 1997 Memorandum Decision. U S WEST and the Telephone Authority appealed those portions of the decision which the circuit court did not remand to the Commission to the South Dakota Supreme Court. The parties stipulated to stay the Supreme Court proceedings until the appeal is reunited after remand to the Commission. It is our understanding that the

The Honorable Charles B. Kornmann  
August 1, 1997  
Page 2

circuit court retains jurisdiction over that portion of the decision which was reversed and remanded and that the initial decision, therefore, is not a final decision.

On July 15, 1997, the Commission again voted to deny the proposed sale but has not yet issued a written decision. U S WEST and the Telephone Authority plan to appeal the Commission's second denial of the proposed sale to the circuit court. Subsequent to that appeal the case will be ready to proceed in the South Dakota Supreme Court. Because the circuit court has not yet issued a final decision U S WEST and the Telephone Authority request that you continue the earlier stay until such time as the circuit court issues a final decision in the state court proceeding and the case is reunited.

Respectfully submitted.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.

Tamara A. Wilka

TAW/vjj

cc: Scott McElroy (w/o enc.)  
Alice Walker (w/o enc.)  
Rochelle Ducheneaux (w/o enc.)  
William P. Heaston (w/o enc.)  
Lawrence Long (w/o enc.)  
Charles McGuigan (w/o enc.)